

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CESARIO VIZCARRA MEDINA,

Plaintiff,

v.

CDCR, et al.,

Defendants.

Case No. 1:22-cv-00764-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT CERTAIN
CLAIMS AND DEFENDANTS BE
DISMISSED

(ECF Nos. 1 & 6)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE

Cesario Medina (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Plaintiff filed the complaint commencing this action on June 22, 2022. (ECF No. 1). The Court screened Plaintiff’s complaint. (ECF No. 6). The Court found that only the following claim should proceed past the screening stage: Plaintiff’s Eighth Amendment excessive force claim against Doe ISU Officers 1-3. (*Id.*).

The Court gave Plaintiff thirty days to either: “a. File a First Amended Complaint; b. Notify the Court in writing that he does not want to file an amended complaint and instead wants to proceed only on his Eighth Amendment excessive force claim against Doe ISU Officers 1-3; or c. Notify the Court in writing that he wants to stand on his complaint.” (*Id.* at 11). On October 13, 2022, Plaintiff filed a notice indicating that he wants to proceed with his

1 Eighth Amendment excessive force claim against Doe ISU Officers 1-3. (ECF No. 7).¹

2 Accordingly, for the reasons set forth in the Court's screening order that was entered on
3 September 30, 2022 (ECF No. 6), and because Plaintiff has notified the Court that he wants to
4 proceed on the claim that the Court found should proceed past screening (ECF No. 7), it is
5 **HEREBY RECOMMENDED** that all claims and defendants be dismissed, except for Plaintiff's
6 Eighth Amendment excessive force claim against Doe ISU Officers 1-3.

7 These findings and recommendations will be submitted to the United States district
8 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
9 **fourteen (14) days** after being served with these findings and recommendations, Plaintiff may
10 file written objections with the Court. The document should be captioned "Objections to
11 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
12 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
13 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
14 (9th Cir. 1991)).

15 Additionally, IT IS ORDERED that the Clerk of Court is directed to assign a district
16 judge to this case.

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18 IT IS SO ORDERED.

19 Dated: **October 14, 2022**

20 /s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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¹ The Court notes that it did not make any recommendations as to how Plaintiff should proceed.